IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2008

Coram

The Hon'ble Mr. JUSTICE S.RAJESWARAN

W.P. No.17801 of 1993 and
W.P.M.P. Nos.27790 of 1993,
23969 of 2003 & 5330 of 2004

K. Narayanareddy .. Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by the Secretary to Government,
Adi Dravidar & Tribal Welfare Dept.,
Fort St. George, Chennai 9.

2. The Special Tahsildar,
Adi Dravidar Welfare,
Thiruvallur Taluk,
Chengai M.G.R. District.

3. Lakshmi
W/o Bojjikkan

4. Renuka
W/o Ravichandran

5. Muniammal
W/o Rajendran

6. Vasantha
W/o Govindan

7. Pappammal
W/o Moongilan

8. Govindammal
W/o Kattikkan

9. Sundarammal
W/o Munuswamy

10.Murugammal
S/o Ravi
11.Sarasu
S/o Subban

12. Lalitha
W/o Venkatesan

13. Muniammal
W/o Munuswamy

14. Sumathi
W/o Krishnan

15. Vasantha
W/o Subramani

16. Mangammal
W/o Haridas

17. Rani
W/o Masthan

18. Saroja
W/o Govindaswamy

19. Rajeswari
W/o Saravanan

20. Adhiyammal
W/o Lakshmanan

21. Govidammal
W/o Munuswamy

22. Saraswathy
W/o Munuswamy @ Echilai

23. Vimala
W/o Peethambaram

24. Parvathy
w/o Munirathnam

25. The Executive Engineer,
Tamilnadu Electricity Board,
Sriperumbudur 602 105. .. Respondents

(Respondents 3 to 24 impleaded as per the order of this Court dt.03.09.2003 in W.P.M.P. No.30000/2003)

(25th Respondent impleaded as per the order of this Court dt.01.03.2004 in W.P.M.P. No.5329/2004)

Petition filed under Article 226 of the Constitution of India praying to issue a writ of CERTIORARI as

stated therein.

For Petitioner .. Mr.R.Sridhar for
R. Narayanaswamy

For Respondents .. Mr.Dhandapani
Spl Govt. Pleader
for R-1 & R-2
M/s.J. Thilagaraj & S.Biju
for R-3 to R-24

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O R D E R

This writ petition is filed to quash the notification under section 4(1) and 6 of the Land Acquisition Act (Central Act I of 1994) issued in G.O. Ms.No.3(D) 407 Adi Dravidar Tribal Welfare dt.18.6.1992 and G.O. Ms.No.3(D) 352 Adi Dravidar tribal Welfare dt.18.5.1995.

2. The case of the writ petitioner is as follows:
The writ petitioner owns 0.42.0 hectare in survey No.88/ 1-A in Thirukanancheri village, Thirvallur Taluk, Chengalput District. The second respondent Special Tahsildar, initiated proceedings for the acquisition of petitioner's land and the lands of another for providing house sites to the Arunthathiar families of Thirukanancheri Village. The said proposal was approved by the first respondent in G.O. Ms.3(D) No.407 Adi Dravidar Tribal Welfare dt.18.6.1992. The said notification was published in Government Gazette dt.1.7.1992. The petitioner sent his representation to the second respondent objecting to the proposed acquisition. According to the petitioner no proper enquiry was held under Section 5(A) of the Land Acquisition Act 1894. Based on the vitiated enquiry and the report sent by the second respondent to the first respondent, the first respondent issued Sec. 6 declaration in G.O. Ms.3(D) No.352 Adi Dravidar Tribal Welfare dt.18.5.1993 challenging 4(1) notification and section 6 declaration, the above writ petition has been filed for the aforesaid relief.

3. Heard the learned counsel for the petitioner, Mr.Dhandapani, learned Special Government Pleader for the first and second respondents and the learned counsel for the respondents 3 to 24. I have also gone through the documents and judgments referred to by them in support of their submissions.

4. The learned counsel for the petitioner assails the acquisition proceedings mainly on two grounds viz., 4(1) notification has been published in 'ATHISTAM' and 'MAKKAL KURAL' newspapers and these newspapers are not in circulation in that village and the award which was passed, pending the writ petition was approved only by the District Revenue Officer (hereinafter called as "D.R.O.") who is an incompetent authority and under section 11 of the Land Acquisition Act, the District Collector alone is a competent authority to approve every award in which total compensation to be allowed does not exceed Rs.10 lakhs.

5. The first ground viz., publishing the 4(1) notification in the newspapers which are not in wide circulation in that area was raised at the time of filing the writ petition itself and the second ground of approving the award by incompetent authority was raised in W.P.M.P. NO.23969 of 2003. Since it is a legal ground, I permit the writ petitioner to raise this ground and accordingly W.P.M.P. No.23969 of 2003 is allowed.

6. In support of the first ground viz., publishing the 4(1) notification in the newspapers are not widely circulated in that area, the learned counsel for the petitioner relied on the following decisions.
1) 2001(4) CTC 108 (V.Krishnan Vs Government of Tamilnadu Rep. By its Secretary, Adi Dravidar and Tribal Welfare Dept., Fort George, Madras 9 and 2 others)

2) 2002(1) CTC 28 (Arumugha Mudaliar S/o Angappa Mudaliar Rep. By the Power of Attorney Agent V.K. Chellakutti, S/o Krishna Gounder, Coimbatore Vs The State of Tamilnadu Rep. By the Secetary to Government Housing and Urban Development Dept., Fort St. George, Madras 9 and another)
3) 2002(4) CTC 288 (K. Subbia Gounder and 8 others Vs The State of Tamilnadu Rep. By its Secretary to Government, Adi Dravidar and Tribal Welfare Dept., Fort George, Madras 9 and another)

7. The learned counsel for the petitioner relies on the decisions of this Court reported in 1999 (III) CTC 715 (T.Paramaraj Vs State of TamilNadu Rep. by the Secretary to Government, Industries Department, Fort St. George, Madras 9 and another) and 2006(1) M.L.J. 244 (N.D.Ramanujam and others Vs State of Tamil Nadu Rep. by its Secretary to Government, Revenue Dept., Chennai and others) in support of the second ground viz., the award approved by an incompetent authority vitiates the entire land acquisition proceedings.

8. Per contra, the learned Special Government Pleader submitted that the provisions of land acquisition act have been properly followed and the newspapers in which 4(1) notification was published were all approved and recognised newspapers and even otherwise, no prejudice has been caused to the writ petitioner as he had the knowledge of the 4(1) notification, sent his representation/ objection and also participated in the enquiry proceedings. The learned Special Government Pleader further submitted that the D.R.O. is a competent authority along with the Collector to approve the award which does not exceed Rs.20 lakhs. He relied on the following decisions in support of his submissions.
1. An unreported judgment of the First Bench of this Court dt.24.3.2006 made in W.A. Nos.261 of 2006 etc. (The State of Tamil Nadu Rep. by the Secretary to Government, Housing and Urban Development (U.D.III (1) Dept., Fort St. George, Chennai 9 and 2 others Vs K. Ponnammal and 9 others)

2. 2007(2) CTC 369 (Ramgopal Estates Pvt. Ltd. Rep. by Managing Director, Chennai 4)

9. The learned counsel for the respondents 3 to 24 who got themselves impleaded in the writ petition by the order of this Court dt.3.9.2003 in W.P.M.P. No.30000 of 2003 while reiterating the averments contained in the counter affidavit filed by them submitted that the writ petition was dismissed for default on 7.3.2001 and thereafter pattas were issued to them by the District Collector on 23.09.2002. After taking possession and when they intended to raise the thatched house, the petitioner and his men prevented them from doing so and therefore a complaint was lodged by them with the Deputy Superintendent of Police, Uthukottai and a F.I.R. was also filed against the petitioner and others. Therefore, as possession itself was handed over to them after passing an award, the writ petition is to be dismissed.

10. In reply, the learned counsel for the writ petitioner submitted that the publication of the notification is not an empty formality and by relying on the report submitted by the Advocate Commissioner who was appointed by this Court on 11.7.2003, submitted that the petitioner is still very much in possession of the property and when the Tamilnadu Electricity Board tried to

disconnect the electricity supply to the petitioner's property, at the writ petitioner's instance, the Executive Engineer, Sriperumbudur was impleaded as 25th respondent on 1.3.2004 in W.P.M.P. No.5329 of 2004 and this Court in W.P.M.P. No.5330 of 2004 granted an order of interim injunction restraining the electricity board viz., 25th respondent from disconnecting the electricity service connection.

11. I have considered the rival submissions carefully with regard to facts and citations.

12. First, let me consider the first contention of the writ petitioner that 4(1) notification was not published in the widely circulated newspapers of that area resulting in vitiation of the acquisition proceedings.

13. It is true that in 2001(4) CTC 108 (cited supra), 2002(4) CTC 288 (cited supra) and 2002(1) CTC 28 (cited supra), this Court interfered with the acquisition proceedings on the ground that 4(1) notification was not published in a widely circulated newspapers in that locality.

14. But in the unreported judgment dt.24.3.2006 (cited supra), the First Bench of this Court, while dealing with such a contention held as under:
"8. Coming to the last contention, namely lack of proper newspaper publication, the learned counsel for the appellants drew our attention to the affidavit filed in the appeal proceedings. In this affidavit, which is sworn to by the Member Secretary, Chennai Metropolitan Development Authority, it is asserted that "Dinakaran", "Makkal Kural" and "Kumari Murasu" are newspapers approved by the Registrar, Newspapers of India and also approved by the Government of Tamil Nadu. In fact, all the legal advertisements of the Government, Local Bodies and Co-operatives are published in these dailies. It is also asserted that these newspapers are in wide circulation in the area where the lands were acquired. The learned senior counsel for the writ petitioners also fairly conceded that "Dinakaran" and "Makkal Kural" are having wide circulation. However, he maintained that "Kumari Murasu" has very little or no circulation in the said area. It is pertinent to note that this objection was not raised by the writ petitioners at any point of time during the acquisition proceedings. This point was also not originally raised in the writ petitions, but subsequently, an affidavit came to be filed alleging that there was lack of publicity. It is not disputed before us that the land owners have participated in the enquiry conducted under Section 5-A of the Act and did not raise any objection at that time in the matter of publication in the newspapers. The newspapers in question are approved newspapers and all the legal advertisements of the Government, Local Bodies and Co-operatives are published in these newspapers. Considering all these facts, we are of the view that there is no substance in the grievance of the writ petitioners that there was lack of proper paper publication."

15. Further, in a very recent judgment reported in 2007(2) CTC 369 (cited supra), another Division Bench of this Court held as follows:
"22.5. But, what all the petitioners contend is that the publication of the notification was made in two dailies, which do not have wide circulation in the locality.

22.6. Of course reliance was placed by the petitioners in this regard on a decision of the Division Bench of this Court dated 8.11.2001 made in W.A.No.1536 and 1554 of 2001 (The State of Tamil Nadu through its Secretary, Adi Dravidar and Tribal Welfare, Chennai vs. Kailasa Nambiar) whereunder it was held as under:

"Common question arises regarding the validity of the publication of Section 4(1) notification in "Kumari Murasu" and "Kinnus" newspapers. Both are Tamil dailies. These two newspapers, indisputably are not having wide circulation and have got very limited circulation. That apart, one of the newspaper should be preferably in English while the other should be compulsorily in the

Regional Language. If that be so, the publication of Section 4(1) notification in two Tamil dailies, not having wide circulation, does not conform to the requirement of law. The legal imposition of publication in two daily newspapers is mandatory, for the reason that they should be made known to the general public, so that they have knowledge of the intended acquisition and then put for their objections, if they so wish. This being the object and intendment, it cannot be scuttled by publishing the same in the newspapers, which are very insignificant, and not having wide circulation. In fact, this requirement of publication in newspapers was not there before the amending Act of 1984. Because of the experience in working of the provisions and the complaints of the public, particularly of the persons interested and affected, of having no knowledge of the acquisition, the Parliament has thought it fit to incorporate the provisions, making it mandatory to publish Section 4(1) notification not only in the gazette and locality, but also in two prominent daily newspapers, one out of which should be in vernacular of that area. We had already dealt with this proposition in the case of Krishnan.V v. Government of Tamil Nadu (2001 (4) CDTC 108), which is also to the same effect that paper publication should be made, one in English daily and another in the Regional Language of wide circulation. We have perused the judgments in RAMIAH MOOPANAR v. STATE OF TAMIL NADU (2000 (1) CTC 117) and CHELLADURAI,N. v. GOVERNMENT OF TAMIL NADU (2000 (III) CTC 215). We approve the view taken by the learned single Judge in those cases. A Division Bench judgment of this Court was brought to our notice rendered in W.A.No.673 of 2001, dated 10.4.2001. But the said judgment did not lay down any legal principles. In fact the judgments rendered by the learned Single Judge, referred to supra, have been mentioned before the said Division Bench. But, the Division Bench has dismissed the Writ Appeal on the ground of laches, as the award was passed long back. In the circumstances, we uphold the order of the learned single Judge, and we hold that the paper publication made is erroneous and direct that the paper publication to be made in prominent daily newspapers, one in English and another in the Regional Language, i.e., Tamil, having wide circulation."

22.7. No doubt, the publication in the newspapers as well as the public notice in the locality should be made in an effective manner, or otherwise it would seriously affect the purport and intent of such publication, which was meant specifically for bringing to the notice of the local people in order to come forward with their say with regard to the acquisition sought to be made, and the purpose of effecting publication in the newspapers having circulation in the locality cannot be treated as a mere formality. There should be purposeful compliance of the provisions of Section 4(1) of the Act and it cannot be reduced to an empty formality. The requirement to cause publication in the newspapers is basic and fundamental and the statutory requirements cannot be compared with the requirement of giving personal notice to interested persons.
22.8. But, in the instant case, the publication of the notifications were made apart from the Government Gazette also in Tamil dailies, viz., "Dina Bhoomi", "Malai Murasu", "Kathiravan", "Makkal Seithi", etc. and also by beat of tom tom in the locality. When the State strongly contends that these newspapers are being circulated in the locality, it may not be proper for this Court, while exercising the power of judicial review under Article 226 of of the Constitution of India, as the power under Article does not permit this Court to go into the factual disputes of the case, unless and otherwise the facts are indisputed, as in the case in W.A.No.1536 and 1554 of 2001 ((The State of Tamil Nadu through its Secretary, Adi Dravidar and Tribal Welfare, Chennai vs. Kailasa Nambiar), nor it is permissible for this Court to jump into the conclusion that the publication of the notification was not made in the newspaper having circulation in the locality, more so where the records produced before us disclose that it is otherwise and the public notice was also made by beat of tom tom.

22.9. We, therefore, hold that the impugned acquisition cannot be held to be vitiated for want of any compliance of all three modes of publication as contemplated in Section 4(1) of the Act, as such publication by all three modes is found to be correct on record."

16. In view of the above two latter Division Bench judgments and considering the fact that no such objection was raised by the writ petitioner at any point of time before filing the writ petition and considering the fact that the writ petitioner had the knowledge of 4(1) notification, he made representation / objection and he participated in the 5(A) enquiry, I am rejecting the first limb of the arguments that acquisition proceedings are vitiated on the ground that 4(1) notification was not published in a widely circulated newspaper of the locality.

17. Coming to the second contention of the writ petitioner that an incompetent authority, D.R.O. in this case has approved the award, it is true that in 1999(III) CTC 715 (cited supra), a learned Judge of this Court held that in the absence of any specific authorisation, it is not clear as to how the D.R.O. in question has approved the award in question as G.O. Ms.No.2003, Revenue, dated 30.12.1984 approves only the Commissioner of Land Administration and District Collector to approve awards.

18. In 2006(1) M.L.J. 244 (cited supra), the Division Bench of this Court after going through the very same G.O. observed that only the Commissioner of Land Administration and the District Collector are the competent authorities to approve the award.

19. The learned Special Government Pleader submitted that the Government has authorised the D.R.O. also to approve an award as per the amendment made to notification issued under the land acquisition act and the amendment made, reads as under:

REVENUE DEPARTMENT
Amendment to notification under Land Acquisition Act
(Letter No.102081/R.Spl/84-2, Revenue, 7th March, 1995)
No.II (2)/REV/1586/85-Under the first proviso to sub-section (1) of section 11 of the Land Acquisition Act, 1894 (Central Act I of 1894), the Governor of Tamil Nadu hereby makes the following amendment to the Revenue Department Notice No.II (2)/REV/7150/84, dated the 13th December, 1984, published at page 900 of part II-Section 2 of the Tamil Nadu Government Gazette, dated the 26th December, 1984:-

AMENDMENT

In the said notification, in item (ii), for the expression "District Collector", the expression "District Revenue Officer/Additional Collector/District Collector" shall be substituted.

C. THANGARAJU,
Commissioner and Secretary to Government

20. A perusal of the above amendment would support the submissions of the learned Special Government Pleader, it cannot be said that the award is vitiated as the same was passed by the D.R.O. In the judgment relied on by the learned counsel for the petitioner, the above referred amendment was not at all brought to the notice of this Court and therefore, the petitioner cannot rely on those decisions in support of his contentions. Further, under Section 11(1), no award shall be made by the Collector under this sub section without the previous approval of the appropriate Government or of such officers as the appropriate Government may authorise in this behalf. As per Section 3(c) of the Central Act I of 1984, the expression "Collector" means the Collector of a District and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of the Collector under this Act. A combined and conjoint reading of Section 11(1), Sec. 3(c) and the amendment issued to the earlier notification will make it

clear that the D.R.O. is also competent authority to approve the award. Hence, the second limb of the arguments of the learned counsel for the petitioner is also rejected.

21. As I have rejected both the grounds, I am not going to the question of possession of the lands. It is true that as per the Advocate Commissioner report, possession is with the writ petitioner and as per the revenue records pattas were issued to the respondents 3 to 24 after the writ petition was dismissed for default. It is also the case of the respondents 3 to 24 that they are in possession of the property in question. In any event, as I am dismissing the writ petition itself, it is for the respondents to take appropriate follow-up action.

S.RAJESWARAN,J.
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In the result, Writ petition is dismissed. No costs. Consequently, connected applications are closed.

10.01.2008
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Index: Yes/No
Internet: Yes/No

To
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Adi Dravidar & Tribal Welfare Dept.,
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2. The Special Tahsildar,
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Pre-Delivery Order
W.P. No.17801 of 1993 and
W.P.M.P. Nos.27790 of 1993,
23969 of 2003 & 5330 of 2004

Dated: .01.2008